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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN JOSE DIVISION

16 UNITED STATES OF AMERICA,) CASE NO. 18-CR-00356 EJD
17 Plaintiff,)
18 v.)
19 SALVADOR MORFIN,) UNITED STATES' SENTENCING
20 Defendant.) MEMORANDUM
21) Date: March 2, 2020
22) Time: 1:30 p.m.
23) Court: Hon. Edward J. Davila
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I. INTRODUCTION & BACKGROUND

The government hereby submits its sentencing memorandum in the above-captioned case. For the reasons discussed below, the government recommends that the Court impose a sentence of 130 months of imprisonment, to be followed by four years of supervised release.

This case arises from an undercover investigation carried out by the Bureau of Alcohol, Tobacco, Firearms, and Explosives focusing on illegal distribution of contraband, including firearms, in San Jose. Defendant originally came into contact with federal law enforcement through codefendant Dereke Holden, who in turn was an associate of Daniel Nogueira—an individual who approached a CI and offered to sell him contraband. Defendant sold a total of approximately 110 grams of methamphetamine

1 during two controlled buys conducted in the course of the federal investigation. Defendant was
 2 subsequently indicted along with three codefendants. (ECF No. 1). The Indictment charged Defendant
 3 with two counts of distribution of and possession with intent to distribute methamphetamine (Counts 8
 4 and 9). On December 2, 2019, Defendant pleaded guilty to Count 8 in the Indictment pursuant to a plea
 5 agreement. (ECF Nos. 91 and 92).

6 Several other associates of Noguiera and Morfin have been indicted in other cases for a variety
 7 of narcotics- and firearms-related criminal conduct.

8 September 20, 2017 Controlled Purchase of Methamphetamine

9 On September 20, 2017, a confidential informant (the “CI”), working with an undercover ATF
 10 agent, purchased 55.9 grams of methamphetamine from Defendant Salvador Morfin. The transaction
 11 was arranged by codefendant Dereke Holden, who was present for and mediated the sale.

12 Previously, the CI and undercover agent had purchased methamphetamine from Holden. On
 13 September 14, 2017, the CI called Holden and asked to deal directly with Holden’s methamphetamine
 14 source. Holden agreed, and the parties arranged to carry out a narcotics purchase on September 20.

15 On September 20, 2017, the undercover agent arrived at the prearranged location in San Jose
 16 around 11:30 a.m. and met Holden and the CI. At approximately noon, an individual later identified as
 17 Defendant Salvador Morfin arrived at the location. Holden and the CI then left the undercover vehicle
 18 and walked over to Defendant’s vehicle. The CI handed Holden the money for the drug purchase, which
 19 Holden passed along to Defendant, who introduced himself as “Panda.” In exchange for the money,
 20 Defendant provided two baggies of suspected methamphetamine. The CI and Defendant agreed to deal
 21 directly in the future, and exchanged contact information. After the CI and Holden exited his vehicle,
 22 Defendant left the area.

23 The narcotics obtained from Defendant on September 20 were later tested by the DEA lab and
 24 confirmed to be methamphetamine with a weight of 55.9 grams and a purity of 100%.

25 October 5, 2017 Controlled Purchase of Methamphetamine

26 On October 5, 2017, Defendant sold another 55 grams of methamphetamine to the CI and
 27 undercover ATF agent.

1 On October 3, 2017 and October 4, 2017, the CI and Defendant exchanged text messages
 2 agreeing to a two-ounce sale of methamphetamine to take place on October 5. On October 5, 2017, the
 3 day of the sale, the CI and the undercover ATF agent arrived at the predetermined San Jose location at
 4 about 1:30 p.m. Defendant was there waiting for their meeting. After relocating to avoid some
 5 uninvolved law enforcement vehicles Defendant had noticed, the parties parked their vehicles and
 6 Defendant entered the undercover vehicle. After discussing the sale and potential future sales of
 7 firearms, Defendant provided a Ziploc bag containing suspected methamphetamine to the undercover
 8 agent. The CI paid Defendant \$800 in exchange for the narcotics. The transaction was recorded by
 9 video with audio, as were the earlier conversations between the CI and Morfin.

10 The narcotics obtained from Defendant on October 5 were later tested by the DEA lab and
 11 confirmed to be methamphetamine with a weight of 55.9 grams and a purity of 99% for a total weight of
 12 55.3 grams.

13 **II. SENTENCING GUIDELINES CALCULATIONS**

14 Pursuant to the United States Sentencing Guidelines, which are advisory after the Supreme
 15 Court's decision in *United States v. Booker*, 125 S. Ct.738 (2005), Defendant has a Total Offense Level
 16 of 27, based on the following calculations. Defendant's Base Offense Level is 30 under U.S.S.G.
 17 § 2D1.1(a)(5) and (c)(5). The government recommends a two-point reduction in light of Defendant's
 18 acceptance of responsibility as demonstrated by his guilty plea. *See* U.S.S.G. § 3E1.1(a). Additionally,
 19 Defendant has assisted the government by providing timely notice of his intention to plead guilty and
 20 permitting the government to avoid preparing for jury trial. Accordingly, the government moves for an
 21 additional one-point decrease under U.S.S.G. § 3E1.1(b). Accordingly, Defendant's final Total Offense
 22 Level is 27 as stated in the parties' Plea Agreement and in the Presentence Report.

23 The government agrees with the Probation Office that Defendant has 22 criminal history points,
 24 resulting in a Criminal History Category of VI. Defendant's Total Offense Level and Criminal History
 25 Category combine to yield a guidelines sentencing range of 130 to 162 months.

26 **III. UNITED STATES' SENTENCING RECOMMENDATION**

27 The government believes that a sentence at the low end of the guidelines is appropriate given the

1 facts of this case and the established sentencing factors. The relevant considerations include the nature
2 and circumstances of the offense, the defendant's history and characteristics, and the need for the
3 sentence: (1) to promote respect for the law and provide just punishment for the offense, (2) to afford
4 adequate deterrence, (3) to protect the public from further criminal conduct by Defendant, and (4) to
5 avoid unwarranted sentencing disparities among defendants with similar records who are guilty of
6 similar conduct. *See* 18 U.S.C. § 3553(a)(2).

7 In this case, a guidelines sentence is appropriate, with a low-end sentence of 130 months being
8 sufficient, but no greater than necessary, to accomplish the above goals. The facts of this case are
9 relatively simple and straightforward, and the government does not believe there are any factors in either
10 the charged conduct or Defendant's background that are sufficiently unique or uncommon to remove
11 this case from the heartland of similar narcotics trafficking offenses contemplated by the guidelines.

12 Defendant's role in the offense conduct demonstrates that he was an active narcotics trafficker
13 during the relevant time period and that the charged conduct was by no means aberrant behavior.
14 Indeed, the CI and undercover agent first made contact with Holden, only reaching Defendant after they
15 asked to be put in touch with Holden's methamphetamine source. Holden—himself an active purveyor
16 of firearms and other contraband, depended on Defendant to supply methamphetamine for his
17 customers. Defendant's apparent willingness to engage in or assist with street sales of firearms to
18 individuals who bought his methamphetamine is also concerning.

19 Defendant's criminal history is extensive, including a felony conviction for domestic violence
20 stemming from a 2018 incident where he punched his girlfriend of eight years in the head and threatened
21 to shoot her if she called the police. This was not Defendant's first conviction for a violent offense, as
22 he had previously been convicted of misdemeanor battery and another domestic violence battery.
23 Consistent with the offense conduct here, Defendant's criminal history contains several offenses relating
24 to controlled substances. His other convictions relate to a variety of antisocial behaviors from vandalism
25 to discharging a laser at an aircraft. All in all, Defendant's criminal history paints the picture of an
26 individual who is unable or unwilling to conform his conduct to the law. It is noteworthy that Defendant
27 committed the charged conduct while still on probation from his most recent previous conviction. These
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1 facts demonstrate a real risk of recidivism and weigh in favor of a significant sentence.

2 **IV. CONCLUSION**

3 For the foregoing reasons, the United States respectfully recommends that this Court sentence
4 Defendant to 130 months of imprisonment—to be followed by a four-year term of supervised release—
5 and order Defendant to pay a \$100 special assessment.

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7 DATED: February 24, 2020

Respectfully Submitted,

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DAVID L. ANDERSON
9 United States Attorney

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/s/
11 JOHN C. BOSTIC
Assistant United States Attorney

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